

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

David Osmek,

Complainant,

vs.

John McKinley,

Respondent.

**FINDINGS OF FACT,
CONCLUSIONS
AND ORDER**

The above-entitled matter came on for an evidentiary hearing on March 24, 2009, before a panel of three Administrative Law Judges: Eric L. Lipman (Presiding Judge), Barbara L. Neilson, and James F. Cannon. The hearing record closed on March 24, 2009.

David Osmek (Complainant) appeared on his own behalf without counsel.

Paul L. Pond, Attorney at Law, Reed & Pond, Ltd, appeared on behalf of John McKinley (Respondent).

STATEMENT OF ISSUE

Did Respondent John McKinley violate Minnesota Statute § 211A.02 by failing to file accurate and complete campaign financial reports?

The panel concludes that the Complainant has established by a preponderance of the evidence that Respondent violated Minn. Stat. § 211A.02.

Based upon the entire record, the panel makes the following:

FINDINGS OF FACT

1. The Complainant, David Osmek, is a current member of the Mound City Council.
2. The Respondent, John McKinley, ran unsuccessfully for mayor of Mound in the November 2008 election. He was defeated by the incumbent candidate, Mark

Hanus, who received approximately 49 percent of the vote to Mr. McKinley's 37 percent.¹

3. During his campaign for mayor, Mr. McKinley made disbursements or received contributions of more than \$750, and was therefore required to file campaign finance reports with the Mound City Clerk.²

4. On or about October 11, 2008, Mr. McKinley placed an advertisement in the local Mound newspaper (*The Laker*), to publicize an upcoming "Meet and Greet" event at which residents would have the opportunity to meet him and share ideas. The advertisement stated that "light refreshments" would be served. The advertisement cost \$93.12. Mr. McKinley paid for the advertisement and properly reported this expenditure on his campaign financial report for the period covering October 1, 2008 through October 17, 2008.³

5. The "Meet and Greet" event was held on October 16, 2008, at the Mound Depot. Mr. McKinley's wife, Mary McKinley, arranged for the light refreshments which included a couple dozen cookies baked by a friend and one pot of home-brewed coffee. It does not appear that these contributions were reflected in the final report.⁴

6. In late October 2008, Thomas "T.J." Skinner developed a campaign website for Mr. McKinley. Mr. Skinner paid \$25 to GoDaddy.com to register the domain name: "mckinley4mayor.com." Although Mr. McKinley reimbursed Mr. Skinner, he incorrectly included the \$25 domain fee as an in-kind contribution in his campaign financial report for the period covering October 17, 2008 through November 11, 2008.⁵ In addition, Mr. McKinley failed to report the \$25 payment to Mr. Skinner as a campaign expenditure.⁶

7. In the final week of the campaign, Pat Meisel, a friend of Mr. McKinley, offered to place an advertisement in *The Laker* promoting his candidacy and urging people to vote for him for mayor.⁷ The advertisement ran in *The Laker* on Saturday, November 1, 2008.⁸

8. The total cost of the advertisement was \$266.19.⁹ Meisel Properties, a limited liability corporation jointly owned by Pat Meisel and her husband, paid for the advertisement.¹⁰

¹ Minnesota Secretary of State's website. (Another candidate, Cheryl Martin, received approximately 14 percent of the vote.)

² Minn. Stat. § 211A.02.

³ Exs. 1, 2C and C.

⁴ Testimony of Mary McKinley.

⁵ Exs. 2 and 2I. Testimony of Thomas Skinner and John McKinley.

⁶ Ex. 2. Testimony of J. McKinley.

⁷ Ex. B. Testimony of J. McKinley and Meisel.

⁸ Ex. B.

⁹ In an email to the Respondent, Ms. Meisel stated that the total cost was \$286. (See Ex. 1D). At the hearing, Ms. Meisel testified that the actual cost was \$266.19 and the parties stipulated to this amount.

9. Mr. McKinley failed to report the \$266.19 cost of the advertisement as an in-kind contribution on his campaign finance report for the period covering October 17, 2008 through November 11, 2008.¹¹ Instead, Mr. McKinley mistakenly included the \$93.19 he spent on the earlier *Laker* advertisement promoting the “Meet and Greet” event in the total amount of in-kind contributions.¹²

10. Mr. McKinley also failed to include in his campaign financial report Ms. Meisel’s name, address, and occupation. This information is required for any individual who makes one or more contributions equal to or greater than \$100 in the calendar year.¹³

11. Mr. McKinley did not list expenditures for rebar for his campaign lawn signs because he did not purchase any rebar. Instead, he borrowed rebar from Ms. Meisel, and returned the rebar to her shortly after the election.¹⁴

Based upon the foregoing Findings of Fact, the panel makes the following:

CONCLUSIONS

1. Minn. Stat. § 211B.35 authorizes the panel of Administrative Law Judges to consider this matter.

2. Minnesota Statutes Chapter 211A governs the campaign financial reporting requirements for local candidates. “Candidate” is defined to mean “an individual who seeks nomination or election to a county, municipal, school district, or other political subdivision office.”

3. Minnesota Statutes Chapter 10A governs the campaign finance and public disclosure requirements for candidates seeking nomination or election as a state constitutional officer, legislator, or judge.¹⁵

4. Because the Respondent sought election to a municipal office, he was required to report campaign expenditures and contributions pursuant to the provisions of Minnesota Statutes Chapter 211A. Minnesota Statutes Chapter 10A is not applicable to this matter.

5. Minn. Stat. § 211A.02 requires candidates who receive contributions or make disbursements of more than \$750 in a calendar year to file financial reports with the

¹⁰ *The Laker* newspaper leases space in a building owned by Meisel Properties. Ms. Meisel testified that the cost of the advertisement was deducted from the amount of money owed by the newspaper for rent. There is no evidence in the record that the Respondent knew the contribution was from a limited liability corporation instead of Ms. Meisel personally. See Minn. Stat. §§ 211B.13 and 211B.15.

¹¹ Exs. 1D and 2. Testimony of J. McKinley and Meisel.

¹² Ex. 2. Compare Ex. 1 and see Ex. 2I.

¹³ Minn. Stat. § 211A.02, subd. 2. Ex. 2.

¹⁴ Ex. 1A. Testimony of Meisel and J. McKinley.

¹⁵ Minn. Stat. § 10A.01, subd. 10.

appropriate filing officer.¹⁶ The reports must include the total amount of receipts and expenditures for each time period covered, as well as the name, address, and employer (or occupation if self-employed) of any individual or committee that has made contributions of \$100 or greater during the year.¹⁷

6. The burden of proving the allegations in the complaint is on the Complainant. The standard of proof of a violation of Minn. Stat. § 211A.02 is a preponderance of the evidence.¹⁸

7. The Complainant has demonstrated that Respondent, John McKinley, violated Minn. Stat. § 211A.02 by filing incomplete and inaccurate campaign finance reports. Specifically, Mr. McKinley failed to properly report the \$266 in-kind contribution for the *Laker* advertisement, the \$25 expenditure for the campaign domain name and the in-kind contributions of refreshments. Mr. McKinley also failed to include the information (name, address, occupation) required under Minn. Stat. § 211A.02, subd. 2(5) for contributions greater than \$100.

Based upon the record herein, and for the reasons stated in the following Memorandum, the panel of Administrative Law Judges makes the following:

¹⁶ Minn. Stat. § 211A.01, subd. 7, defines “filing officer” to mean the officer authorized by law to accept affidavits of candidacy or nominating petitions for an office or the officer authorized by law to place a ballot question on the ballot.

¹⁷ Minn. Stat. § 211A.02, subd. 2(5) (2006).

¹⁸ Minn. Stat. § 211B.32, subd. 4.

ORDER

IT IS ORDERED:

1. That, by June 1, 2009, John McKinley file with the Mound City Clerk and the Office of Administrative Hearings revised campaign financial reports correcting the errors identified.

2. That having been found to have violated Minn. Stat. § 211A.02, John McKinley pay a civil penalty of \$75 by June 1, 2009.¹⁹

Dated: April 8, 2009

/s/ Eric L. Lipman
ERIC L. LIPMAN
Presiding Administrative Law Judge

/s/ Barbara L. Neilson
BARBARA L. NEILSON
Administrative Law Judge

/s/ James F. Cannon
JAMES F. CANNON
Administrative Law Judge

Reported: Digitally recorded, no transcript prepared.

NOTICE

This is the final decision in this case, as provided in Minn. Stat. § 211B.36, subd. 5. A party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

¹⁹ The check should be made payable to "Treasurer, State of Minnesota" and sent to the Office of Administrative Hearings, P.O. Box 64620, St. Paul MN 55164-0620.

MEMORANDUM

Minnesota Statutes Chapter 211A governs campaign financial reporting for local candidates. The Complainant established that the Respondent failed to accurately and completely report expenditures and contributions relating to his unsuccessful campaign to be elected Mayor of Mound.

While Respondent argues, in part, that he was not obliged to separately account for the expenses associated with his “meet and greet” event – on the grounds that these qualified as “non-campaign disbursements” under Minn. Stat. § 10A.01, subd. 25 (5) – this argument is not availing. Because Mr. McKinley sought election to municipal office, the spending limit provisions of Minn. Stat. § 10A.25 are not applicable to him or his campaign committee. Moreover, even if the provisions of Chapter 10A were applicable in this case, labeling these expenses “non-campaign disbursements” would not relieve a candidate or committee from the obligation to track or report these transactions.²⁰

The Respondent is directed to revise his campaign financial reports by correcting the identified errors and file the amended reports with the Mound City Clerk by May 30, 2009. The panel further concludes that a civil penalty of \$75 is appropriate in this matter. The financial reporting violations appear to have been inadvertent, they had minimal or no impact on the voters, and the Respondent has accepted responsibility for them.

E. L. L., B.L.N., J. F.C.

²⁰ Minn. Stat. § 10A.20, subd. 3 (l) and (m) (2008).